

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

CHRISTINA M.I. KELTON,	:	Case No. C-1-02-345
	:	
Plaintiff,	:	Judge Weber
	:	
v.	:	
	:	
UNIVERSITY OF CINCINNATI, et al.,	:	DEFENDANTS' REPLY TO
	:	PLAINTIFF'S RESPONSE TO
Defendants.	:	DEFENDANTS' NOTICE OF
	:	<u>SUPPLEMENTAL AUTHORITY</u>

Plaintiff's assertions in her response to Defendants' notice of supplemental authority are without merit. The Sixth Circuit's decision in White v. Burlington Northern & Santa Fe Railway Co., 2004 WL 789726 (6th Cir. April 14, 2004) (en banc), merely confirmed the existing Sixth Circuit legal standard regarding adverse actions, as Plaintiff herself acknowledges in her response. (Plaintiff's Response at 2) And as fully explained in the University's motion for summary judgment and reply brief, e-mails from Plaintiff's co-workers regarding her duties as Director of Graduate Studies are not adverse actions under existing Sixth Circuit law. (University MSJ at 25-27; University Reply Br. at 15-16) White is not to the contrary.^{1/}

Plaintiff's efforts to distinguish the cases cited in Defendants' notice of supplemental authority are without merit. Plaintiff's conclusory assertion that she "experienced adverse employment actions which substantially affected her employment with respect to her position, responsibility, and earnings" (Plaintiff's Response at 3) is unsupported by the record. The e-

^{1/} Although denial of the headship position would be an adverse action, Plaintiff did not engage in any protected activity prior to the decision not to make her (or Goddard) head of the Department of Economics. (University MSJ at 24-25; University Reply Br. at 13-14)

mails from co-workers regarding her duties as Director of Graduate Studies had no effect on Plaintiff's "position, responsibility, and earnings."

Plaintiff's argument regarding her supposed protected activity is also without merit. Once again, Plaintiff simply concludes without supporting evidence that she both "believed" and could have "reasonably" believed that Defendants discriminated against her and that her claims are not "baseless." (Plaintiff's Response at 4) As explained fully in the University's motion for summary judgment and reply brief, the record does not support Plaintiff's conclusion. (University MSJ at 24-25; University Reply Br. at 13-15) In addition, most of Plaintiff's alleged "protected activity" would not fall under the "participation clause"; only Plaintiff's EEOC filing would fall under that clause and she did not file her charge until October 24, 2000, well after the alleged "adverse actions."

For each and all of the foregoing reasons, in addition to the reasons previously stated in Defendants' prior filings, Defendants' motions for summary judgment should be granted.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on May 17, 2004, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

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s/ Doreen Canton

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